STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-42

July 31, 2001

PUBLIC UTILITIES COMMISSION
Rulemaking to Create a Statewide Low-Income Assistance Plan
(Chapter 314)

ORDER ADOPTING RULE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we adopt Chapter 314, which establishes the standard design, administration and funding mechanism for a Statewide Low-Income Assistance Plan (Plan) to make electric bills more affordable for qualified low-income customers. Chapter 314 requires each of Maine's transmission and distribution utilities to create or maintain a Low-Income Assistance Program (LIAP) for its customers. Chapter 314 creates a central fund to finance the statewide plan and apportions the fund to each utility based on the percentage of LIHEAP eligible persons residing in that utility's service territory. Chapter 314 further provides that the Maine State Housing Authority will administer the Plan and the individual Low-Income Assistance Programs.

II. BACKGROUND

By Notice of Rulemaking dated February 6, 2001, we initiated a rulemaking to create a statewide assistance plan for low-income electricity customers in response to 35-A M.R.S.A. § 3214. Written comments to the proposed rule were accepted until March 30, 2001. A public hearing on the proposed rule was held on March 8, 2001, during which representatives from Bangor Hydro-Electric Company, Van Buren Light and Power, Houlton Water Company, and Eastern Maine Electric Cooperative testified that the proposed rule was extremely burdensome and recommended that it be amended. To address these concerns and subsequent written comments, we prepared an amended draft of our initial proposed rule. The amended rule, along with a Notice of Further Rulemaking and Request for Comments was issued on May 15, 2001[1].

[1] A summary of our initial proposed rule and a discussion of the comments in response to that rule can be found in our Notice of Further Rulemaking and Request for Comments issued on May 15, 2001.

The May 15th Notice invited comments on the amended rule[2] and established June 22, 2001 as the comment deadline. The following organizations and representatives filed written comments on the amended rule: Office of the Public Advocate (OPA); Maine State Housing Authority (MSHA); State Planning Office (SPO); Maine Community Action Association (MCAA); Maine Association of Interdependent Neighborhoods (MAIN); Van Buren Light and Power (Van Buren); Kennebunk Light and Power District (Kennebunk); Eastern Maine Electric Cooperative (EMEC); Houlton Water Company (HWC); Fox Islands Electric Cooperative (Fox Islands); Bangor Hydro-Electric Company (BHE); and Central Maine Power Company (CMP).

III. DISCUSSION OF GENERAL COMMENTS

Several commenters made general comments about the amended rule. These comments and our responses are summarized in this section of the Order.

BHE and CMP expressed general satisfaction with the amended rule and indicated that it represented a significant improvement over the initial proposed rule. However, OPA, MAIN and MCAA preferred the initial proposed rule to the amended rule. Each of these commenters favored a uniform statewide percentage of income (PIP) type of program to the program embodied in the amended rule. These commenters asserted that if the Commission adopts the program outlined in the amended rule, the Commission should do so on an "interim" basis and explicitly state that it will consider ways to improve the program, including moving to a PIP-type program in the future. These commenters also requested that the Commission give further consideration to a preliminary proposal offered by MSHA at a stakeholders meeting on April 19, 2001.[3]

We are sensitive to these commenters' concerns that the program reflected in the adopted rule will be "set in stone." The program reflected in the adopted rule represents a series of compromises that were necessitated, in part, by the need to get the statewide program in place by October 1, 2001. We expect that the program outlined in the adopted rule can be improved and we will continue to consider ways to accomplish this. We will give further consideration to the preliminary proposal offered by MSHA and any other proposal and if we are convinced that changes to the adopted rule will improve the statewide plan, we can amend the rule accordingly.

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[2] In this Order, we use "amended rule" to refer to the draft rule that was attached to our May 15, 2001 Notice of Further Rulemaking and Request for Comments, "initial proposed rule" to refer to the draft rule that was attached to our February 6, 2001 Notice of Rulemaking and "adopted rule" to refer to the rule that is attached to, and adopted by, this Order.

[3] HWC also supported the preliminary proposal offered by MSHA.

Kennebunk, HWC, Van Buren and Fox Islands were critical of the assessment and apportionment provisions of the amended rule and the impact those sections have on certain consumer-owned transmission and distribution utilities. Kennebunk was particularly critical of the way the amended rule calculates assessment and apportionment amounts. Fox Islands objected to the fact that out-of-state residents, who will likely never benefit from the program, will be forced to contribute to program funding. HWC asserted that the amended rule would require customers of consumer-owned transmission and distribution utilities to pay a disproportionate amount to fund the program. Kennebunk, Van Buren and HWC recommended that assessments to consumer-owned transmission and distribution utilities be capped to limit cross-subsidies among utilities and avoid inequities. Van Buren asserted that the impact of the amended rule on certain consumer-owned transmission and distribution utilities is contrary to the legislative intent of Maine's restructuring statute (P.L. 1997, ch. 316).

We disagree with these comments. Pursuant to the method we used to establish the assessment and apportionment amounts,[4] each utility is contributing approximately the same amount per residential customer to the Fund ($9.16 annually) and is receiving the same amount per LIHEAP eligible person in its service territory ($135.72) from the Fund. This amount is also consistent with the amount per residential customer that the investor-owned utilities have been contributing to their individual LIAPs. The adopted rule, therefore, does not increase the amount that utilities contribute per residential household, nor does it require that one utility pay more per residential customer than any other utility. It simply expands the funding to include all residential customers in the State.

We acknowledge that the apportionment method we have adopted will result in some utilities' receiving more money from the fund than others. We believe that this is consistent with the intent of 35-A M.R.S.A § 3214 to address the "need" that exists in the State. The intent of 35-A M.R.S.A § 3214 is to ensure that every person in the State receives the assistance with their electric bill they need, regardless of the service territory in which they reside. With this in mind, the transfer of money from wealthy utility areas to less wealthy areas cannot (and should not) be avoided.

MAIN objected to the fact that the pre-program arrears forgiveness provisions in the initial proposed rule were deleted from the amended rule. MAIN recommended that the adopted rule require transmission and distribution utilities to offer pilot arrears forgiveness programs. While the concept of arrears forgiveness has been discussed in this rulemaking, the details regarding design and cost have not been sufficiently developed in this proceeding. Therefore, we are not prepared to incorporate a provision into the adopted rule that requires transmission and distribution utilities to implement pilot pre-program arrears forgiveness programs. As noted above, we are free to amend the rule in the

[4] See section 3(E) of this Order for an explanation of the method used to calculate the assessment and apportionment amounts.

future and will continue to consider ways to improve the Statewide Low-Income Assistance Plan.

III. DISCUSSION OF INDIVIDUAL SECTIONS

In this part of the Order, we discuss the individual sections of the amended rule, the positions of the commenters regarding those sections, and our rationale for maintaining or modifying those sections in the adopted rule.

A. Section 1: General Provisions and Definitions

The scope of the adopted rule is unchanged from the amended rule. Section 1(A) of the amended rule provided that the rule will apply to all transmission and distribution utilities in the State with the exception of the three "island" utilities that are exempted from restructuring pursuant to §3202(6)[5]. In written comments, the OPA supported the exemption of the three island communities. MAIN recommended that the even though these three utilities are exempted from restructuring, their customers should be eligible to participate in a LIAP. Fox Islands asserted that because these island utilities are exempted from restructuring, it is unlikely that they would be willing or able to assume the responsibilities and incur the costs necessary to implement a LIAP. Because these utilities are exempted from the restructuring statute,[6] which includes §3214, we have not included these utilities in the scope of the rule.

The definitions section for the rule is set forth in §1(B). The only change from the amended rule is the definition of "Community Action Agency" in §1(B)(5). The justification for the change in the definition is explained in Part B below in our discussion of §4(B) of the adopted rule.

B. Section 2: Purpose of the Statewide Low-Income Assistance Plan and LIAPs

The purpose of the Plan and the LIAPs is to establish a series of bill payment assistance programs for low-income residential customers that will (1) bring participants' electric bills into the range of affordability; (2) make assistance available to low-income customers throughout the State and (3) ensure that each of Maine's transmission and distribution utilities has the funds necessary to implement a LIAP. No one filed comments relating to §2 of the amended rule and we have made no changes to §2 in the adopted rule.

[5] These three systems are Matinicus Plantation Electrical Company, Monhegan Plantation Power District and the Isle au Haut Electric Power Company.

[6] 35-A, Chapter 32.

C. Section 3: Creation and Implementation of LIAPs

Section 3(A) of the amended rule requires each of Maine's transmission and distribution utilities to develop and implement a LIAP by October 1, 2001. CMP, BHE and MPS are required to modify their existing low-income programs to bring their programs into compliance with the final rule for the 2002 program year. No comments were filed relating to §3(A) of the amended rule and we have made no changes to this section in the adopted rule.

Section 3(B) of the amended rule provided that the Commission would review and approve each LIAP and requires each transmission and distribution utility without an existing low-income program to submit a proposed LIAP for Commission review on or before August 1, 2001. We extended the filing deadline in the adopted rule to September 1, 2001, to provide transmission and distribution utilities with the time necessary to develop and submit their proposed LIAPs.

D. Section 4: Required Design Features of a LIAP

Section 4(A)(1) of the amended rule provided that each utility's LIAP must be made available to all of the utility's residential electric customers (or member of the customer's household) who are certified to receive LIHEAP benefits. BHE commented that, if read literally, this provision would prohibit the enrollment of customers who meet the eligibility requirements for receiving LIHEAP benefits, but have not yet been certified to receive such benefits. We agree with BHE's comment and have modified §4(A)(1) of the adopted rule to make it clear that a customer (or household member) only has to be eligible for LIHEAP benefits for the customer to be eligible for a LIAP.

Section 4(B) of the amended rule provided that the LIAPs will be administered by the MSHA, "in cooperation with the Community Action Agencies and other entities that may contract with the MSHA." In its comments, OPA supported the provision as written. However, MSHA indicated that it might need to contract with entities other than Community Action Agencies to administer the LIAPs at the local level, or administer the program itself. MSHA therefore requested that the language "in cooperation with the Community Action Agencies" in §4(B) be deleted. MSHA further requested that all references in the amended rule to "Community Action Agencies" be deleted or modified to make it clear that MSHA may contract with any qualified entity to administer the LIAPs at the local level, or may perform that function itself. In the adopted rule, we have made the amendments requested by MSHA.

We have added a new §4(C) to the adopted rule in response to comments submitted by BHE. BHE noted that the Penobscot Indian Nation certifies a number of participants in its existing program. Section §4(C) of the adopted rule provides that transmission and distribution utilities shall enroll

customers who have been certified to be eligible for LIHEAP by approved tribal organizations.

Section 4(C) of the amended rule directed that data, such as certification and enrollment information, should be transferred electronically between the utility and the agency responsible for certification and benefit calculation. In its comments, MCAA expressed concern about the costs associated with electronic transfer of such data and who would bear those costs. MSHA questioned whether the electronic transfer of the information in question was more efficient than alternative transfer mechanisms. BHE requested that existing data transfer protocols be permitted for at least the 2002 program year. In response to these comments, we have modified §4(D) of the adopted rule to direct that certification and enrollment information be transferred "in the most efficient, cost effective way possible." However, we continue to believe that electronic transfers are, in most instances, more efficient than alternative data transfer methods and encourage utilities, MSHA and its agents to consider the benefits of electronic data transfers.

Section 4(D) of the amended rule required that LIAP benefits be stratified so that participants with the greatest needs receive the highest benefits. This section further required that each LIAP that does not employ a percentage of income benefit structure must have a minimum of four separate benefit categories that are based on the federal poverty guidelines. Finally, this section required that each LIAP include a provision that tracks changes in the federal LIHEAP program which may affect a customer's eligibility for the LIAP, such as an increase in the LIHEAP eligibility requirement. In its comments, OPA supported the four-tiered structure in the amended rule and indicated that it represented an improvement over the two-tiered structure in the initial proposed rule. MSHA also supported the four-tiered structure but suggested that we remove the word "federal" to describe the LIHEAP program. MSHA noted that while LIHEAP is federally funded, each state designs its own program and that the program changes this section is trying to accommodate are changes that can be made at both the State and federal level. In response to MSHA's comments, we have deleted the word "federal" from §4(E) of the adopted rule.

BHE asked if the LIHEAP guideline ceiling for the 2002 program year would be 150%. BHE should check with the MSHA to determine what the LIHEAP guideline ceiling will be in 2002. The adopted rule does not alter the applicable poverty guidelines or ceilings. It simply refers to them as criteria for determining eligibility and benefit levels.

Section 4(E) of the amended rule required that the LIAP enrollment process be designed so that each participant receives the first benefit on the bill immediately following the utility's receipt of the participant's certification. This section also provided that if the bill will be issued within 5 business days after the receipt of the certification, enrollment must be completed before the following bill

is issued. Finally, this section of the amended rule provided that if enrollment is delayed, enrollment shall be retroactive to the first bill issued after certification.

BHE expressed concern over the 5-day enrollment requirement and noted that it is often difficult for BHE to process its requests within that period of time. BHE is misreading the amended rule. The amended rule did not require a utility to "enroll" a customer within five days of its receipt of the certification. The amended rule required that a customer receive a benefit on the next bill following the utility's receipt of the certification. If the next bill will be issued within five days of the utility's receipt of the certification, the benefit may appear on the following bill. If the benefit does not appear on the subsequent bill, the benefit must be retroactive to the second bill whenever it does appear on the customer's bill. For this reason, the adopted rule remains unchanged.

EMEC recommended this provision be modified to allow LIAP benefits to be disbursed on a basis other than monthly. In response to these comments, we have modified §4(F) of the adopted rule to allow utilities to disburse benefits on a monthly or lump-sum basis. The adopted rule also explicitly states that for LIAPs that provide benefits in one lump sum, the benefit must be credited to the participant's bill no later than June of the applicable program year.

Section 4(F) of the amended rule provided that the Statewide Low-Income Plan would be funded by an assessment on the State's transmission and distribution utilities. No comments were received on this section and it remains unchanged as §4(G) of the adopted rule.

Section 4(G) of the amended rule required participants to accept no-cost energy management programs offered by or through the applicable transmission and distribution utility or MSHA or another federal or state agency. In its comments, the OPA supported this requirement. The SPO expressed concern about this section because it "presupposes and anticipates that there will be energy conservation and management measures available to [a] LIAP eligible household...." We disagree with SPO. All that is intended or required by this section is that each LIAP participant take advantage of available DSM programs. This section does not mandate or even suggest the creation of new DSM programs. In its comments regarding this section, BHE suggested that the phrase "shall accept" be changed to "shall agree to accept" to allow the energy management provider time to schedule the available service without affecting the customer's acceptance into the LIAP. We agree with BHE's suggestion and have made the corresponding modification in §4(H) of the adopted rule.

Section 4(H) of the amended rule reflects the statutory directive in §3214(2)(B) which provides that the funding formula "may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must

be provided in a manner most likely to prevent the loss of other federal assistance." No comments were filed relating to this section and it remains unchanged as §4(I) of the adopted rule.

Section 4(I) of the amended rule clarified that the provisions of Chapter 81 of the Commission's rules shall continue to apply unless specifically varied by the amended rule. No comments were received on this section and it remains unchanged as §4(J) of the adopted rule.

Section 4(J) of the amended rule established that the rule creates a pool of eligible applicants, but does not confer any automatic right or entitlement on any person or eligible entity. In its comments, MAIN objected to this section and asserted that if a customer is improperly denied access to a LIAP, she should receive a notice of the denial and have the right to a review of the denial. We agree with MAIN and have deleted the former §4(J) from the adopted rule. We also note that any customer who has a complaint regarding LIAP eligibility or benefit levels may file a complaint with the Commission's Consumer Assistance Division.

E. Section 5: Statewide Low-Income Plan Funding

It is important to keep the following definitions in mind when reading the funding section of the adopted rule. Each of these definitions appears in section 1(B) of the adopted rule. "Apportionment" is the amount of money that a transmission and distribution utility must spend annually on its LIAP. "Apportionment rate" is the percentage of the Statewide Low-Income Assistance Plan Fund to which a transmission and distribution utility is entitled. "Assessment" is the amount of revenue each transmission and distribution utility must annually contribute to the Statewide Low-Income Assistance Plan Fund.

Section 5(A) of the amended rule establishes the Statewide Low-Income Assistance Plan Fund (Fund). The purposes of the fund are to pay LIAP benefits and to cover the MSHA's administrative costs. The fund will be generated and maintained by contributions from the State's transmission and distribution utilities. The fund will have separate dedicated accounts for LIAP benefits and administrative expenses. No comments were received on §5(A) and that provision remains unchanged in the adopted rule.

Section 5(B) of the amended rule established levels for LIAP benefits and administrative costs for the LIAP program year beginning October 1, 2001. Section 5(B)(1) of the amended rule set the total annual statewide spending on LIAP benefits at $5,823,120. In its comments, BHE requested clarification of the calculation of its assessment under the rule.

To address BHE's concern, it is helpful to first explain the method used to calculate the assessment and apportionment amounts. To establish the

total annual spending amount for benefits, we combined the current benefit funding amounts included in rates by Central Maine Power Company, Bangor Hydro-Electric Company, and Maine Public Service Company. We then took this figure and divided it by the number of people eligible for LIHEAP in those service territories to establish a funding amount "per LIHEAP eligible person" in those utilities' service territories. We then multiplied this figure by the total number of LIHEAP eligible persons in the State to establish the total funding amount for benefits for the Statewide Low-Income Assistance Plan. The total annual spending amount for administrative costs, including both the utilities' costs as well as the MSHA's costs, was calculated in the same manner as the total benefit cost.

After researching BHE's concern, we determined that the revenue figure for BHE used to calculate the overall assessment amount was incorrect. The figure was based on year 2000 revenues and included two months of generation revenues. To remedy this problem, we recalculated the funding "per LIHEAP eligible customer in Maine" using a revised funding amount for BHE that reflects the funding amount included in rates by BHE ($803,000.00) pursuant to its rate design case (Docket No. 97-596). We then used the revised funding amount to recalculate the overall assessment amount. We recalculated each utility's assessment and apportionment amount based on the revised funding level for overall assessment amount. The revised assessment and apportionment amounts are reflected in Appendix A of the adopted rule.

In its comments, MAIN requested an explanation for what it believed to be a reduction in program funds from the initial proposed rule to the amended rule of approximately $500,000. The initial rule proposed a Statewide "ELP" program and the funding level proposed in the amended rule reflected the cost of operating such a program. The amended rule proposed a Statewide Low-Income Assistance Plan[7] and the funding level proposed reflected the cost of operating this plan.

In its comments, CMP asserted that CMP's assessment amount under §5(B)(1) of the amended rule is approximately $500,000 greater than the amount currently included in the company's rates. CMP offered its interpretation of how the difference between its assessment and what it recovers in rates should be treated for ratemaking purposes. The adopted rule is silent with regards to the recovery of LIAP costs by the transmission and distribution utilities. Utilities are under different ratemaking regimes where the timing and process for recovering costs is utility specific. The issue of cost recovery by utilities is thus more appropriately addressed in the ratemaking process.

Section 5(B)(1) of the amended rule further provides that each transmission and distribution utility must remit its assessment amount to MSHA

[7] The Statewide Low-Income Assistance Plan is comprised of the transmission and distribution utilities' individual LIAPs.

by October 7 of each program year. In their written comments, CMP and EMEC asserted that it is unnecessary to require utilities to forward the entire amount they owe to MSHA in one lump sum payment at the beginning of the program year. They recommended that the amended rule be modified to allow for payments either in installments or on an as needed basis. We agree with CMP and EMEC and have modified this section to require transmission and distribution utilities that owe assessment funds to MSHA to make payments in two installments, the first on December 15 and the second on March 15 for the program year beginning October 1, 2001. Section 5(B)(1) of the adopted rule further provides that the Commission will, by November 1 of each program year, specify the amounts to be contributed by transmission and distribution utilities to MSHA in their December 15 and March 15 installments. This section further provides that a transmission and distribution utility may elect to remit the entire amount its owes to MSHA on December 15.

Section 5(B)(2) of the amended rule established $239,720 as the transmission and distribution utilities' collective contribution to MSHA to cover the costs of administering the Statewide Low-Income Assistance Plan. We received several comments regarding this section of the amended rule. The MCAA expressed concern about the adequacy of the overall amount and questioned the wisdom of establishing a "hard cap" on administrative costs in the rule. MSHA also questioned the adequacy of the total amount of administrative costs established in the amended rule. MSHA argued that it has prepared a preliminary budget that indicates its administrative costs will be $60,000 based on certain conservation assumptions. In its comments, CMP asserted that the administrative cost levels established in the amended rule are sufficient and that the Commission should reject requests to increase these levels.

We agree with MSHA. The funding level for administrative costs included in the initial rule was based solely on the amounts that the utilities paid to the CAP agencies. The funding amount did not include funds to cover MSHA's costs of overseeing the Statewide Low-Income Assistance Plan. We have, therefore, increased the administrative funding amount in the adopted rule by $50,000.00 to cover MSHA's costs of administering the Statewide Low-Income Assistance Plan. We also point out that the adopted rule includes a provision to adjust the funding level for administrative costs in the event that the funding level is too high or too low.

Kennebunk asserted that the amount of administrative costs for MSHA in the amended rule is too high. Kennebunk also questioned the rationale of having each utility contribute the same amount for administrative costs when one utility's program may be more administratively burdensome to operate than another's. Because we do not know at this time what type of program each utility will propose, we believe the most equitable way of assigning administrative costs is for each utility to contribute the same amount. In addition, even though program design may vary, the process for establishing eligibility for the individual

LIAPs, as well as the administration of the LIAPs by MSHA, should be similar. The process, therefore, for establishing each utility's contribution to the fund for administrative costs remains unchanged in the adopted rule.

Section 5(B)(2) of the amended rule provides that each transmission and distribution utility must transfer funds to cover administrative costs to the MSHA by October 7 of each program year. In its comments, MSHA asserts that this arrangement will require MSHA and its local administering agents to carry any administrative costs incurred prior to that date. The MSHA also indicated that this was not a problem for them, though it may be a problem for the CAPs. Because the full funding amount for administrative costs will be forwarded to MSHA for the entire year each October 7, the only year that this may be a problem will be the first year. Since the CAPs did not indicate in their comments that this would present a problem, the adopted rule remains unchanged.

Finally, in its comments regarding §5(B)(2) of the amended rule, MSHA asserted that it understands the Commission will "negotiate with the CAPs to establish their costs for administering LIAPs based on past experience in administering the programs for the utilities." This is incorrect. We regard the CAP's administrative costs as one of the many interrelated items that MSHA will address when MSHA negotiates contracts with the various entities it selects to administer the LIAPs at the local level. In some instances, the MSHA may decide to administer the program itself. In other situations, the MSHA may contract with other entities to administer the LIAPs at the local level. For this reason, §6 of the adopted rule specifies that the MSHA is responsible for negotiating contracts with the CAPs.

Section 5(C) of the amended rule provided that the Commission will monitor the needs of Maine's low-income electric customers and will evaluate annual LIAP funding and expenditure levels and program design features. Section 5(C) further proposed that the Commission would make necessary adjustments to the assessment level by May 1st of the applicable year to ensure compliance with 35-A M.R.S.A.§ 3214. We changed this date, as well as the date for utilities to file requests to modify the apportionments, in the adopted rule to March 1. Section 3(B) requires utilities to file program modifications with the Commission by May 1. In these filing, the utilities will need to include their assessment and apportionment amounts and therefore need to have this information prior to May 1.

Section 5(D) of the amended rule established the mechanism by which each utility's apportionment will be set. This section further provided that a transmission and distribution utility may, by May 1st, petition the Commission to modify the apportionment rates for the upcoming program year. As explained in the previous paragraph, we changed the deadline for petitioning the Commission to change the apportionments in the adopted rule to March 1.

Section 5(E) of the amended rule established how monies would be transferred into and out of the Statewide Low-Income Fund. Section 5(E)(1) provided that each utility whose assessment exceeds it apportionment must transfer the difference to the MSHA by September 30 of each year. For the reasons stated in our discussion of §5(B)(1), we have chosen to adopt an installment payment schedule under that section. To make §§5(B)(1) and (F)(1) consistent, we simply reference §5(B)(1) in §5(E)(1) of the adopted rule.

Section 5(E)(3) of the amended rule provided that each utility whose LIAP expenditures are less than its apportionment must contribute the difference between the apportionment and the expenditure amount to the MSHA for inclusion in the fund prior to the commencement of the next program year. In their comments, EMEC and BHE questioned the need for, and workability of, this section. We agree with these commenters and have deleted this section from the adopted rule.

Section 5(E)(4) of the amended rule provided that no utility would be reimbursed for LIAP expenditures that exceeded the utility's apportionment. This section further provided that each utility whose LIAP expenditures exceed its apportionment may make adjustments to its LIAP pursuant to §3(B) of the rule. In its comments, BHE asked if the language of §5(E)(4) was intended to bar future cost recovery for LIAP expenditures that exceed its apportionment. We have amended §5(E)(3) in the adopted rule to clarify that this section bars reimbursement from the Fund of a utility's LIAP expenditures that exceed the utility's apportionment. This section does not preclude a utility from attempting to recover such expenditure is a subsequent rate proceeding.

BHE also questioned when adjustments to a LIAP made pursuant to this section would take effect. Section 3(B) of the adopted rule specifies that program modifications will not take effect until the following program year after approval by the Commission.

Finally, BHE requested clarification in the rule about how its LIAP would be altered if an adjustment to its LIAP were required. As noted above, LIAP modifications will be considered by the Commission on a case-by-case basis pursuant to §3(B). Any modifications approved pursuant to §3(B) will take effect at the beginning of the following program year. The details that BHE seeks will be determined in our §3(B) proceeding of the LIAP in question and therefore cannot be provided at this time either in this rule or in our Order adopting the rule.

F. Section 6: Statewide Low-Income Assistance Plan and LIAP Administration: Role of MSHA

The introductory language to §6 of the adopted rule provides that MSHA will administer, implement and coordinate the statewide plan and the individual LIAPs in conjunction with MSHA's delivery of LIHEAP in Maine. MSHA, operating through its designated entities at the local level, will determine customer eligibility for the various LIAPs and communicate that information to the local utility. MSHA will also be responsible for other administrative duties that may be associated with the determination of eligibility and benefit amounts for each LIAP. Consistent with our discussion of MSHA's comments regarding §5(B)(2) above, we have added language to the introductory language to §6 that clarifies that MSHA will be responsible for negotiating agreements with the entities MSHA designates to administer the LIAPs at the local level.

Section 6(A)(1) of the adopted rule requires the MSHA to create and manage the Statewide Low-Income Assistance Fund. This section also requires the MSHA to place the funds in an interest bearing account in accordance with its standard investment policies pertaining to funds held in trust.

Section 6(A)(2)(c) of the amended rule addressed MSHA's role in monitoring and tracking LIAP benefits paid by utilities. This section of the amended rule contained a typographical error; the words "apportionment" and "assessment" were reversed. We have corrected this typographical error in the adopted rule. This appears as section 6(A)(3)(c) in the adopted rule.

Section 6(B) of the amended rule provided that MSHA would be reimbursed for the administrative costs it incurs administering the statewide plan and individual LIAPs up to $239,720. Consistent with our discussion under §5(B)(2), we have adjusted the amount in §6(B) to $291,164 in the adopted rule.

As discussed above, MSHA expressed concern in its comments about the adequacy of funds to cover administrative costs incurred by the regional entities that help administer the LIAPs at the local level. MSHA also expressed uncertainty about who would negotiate the contracts with these regional entities that will establish the administrative cost levels. In response to MSHA's comments, we have modified §§5(B)(2) and 6(B) to increase the amount of funds available to cover administrative costs associated with the statewide plan. We have also added language to §6 to clarify that MSHA will be responsible for negotiating agreements with the entities MSHA chooses as its regional agents. In further response to the concerns expressed by MSHA in its comments, we have added §6(C) to the adopted rule, which provides that disagreements between MSHA and its regional agents regarding compensation for administrative costs will be brought to the Commission for resolution.

Sections 6(C) and (D) of the amended rule related to the MSHA's reporting and record maintenance responsibilities. No comments were received on these sections and aside from being renumbered as §§6(D) and (E) respectively; they remain unchanged in the adopted rule.

Consistent with the request from MSHA, we have modified §6(F) in the adopted rule to provide that MSHA may, but is not required to, contract with Community Action Agencies to administer the individual LIAPs at the local level.

G. Section 7: Obligations of Transmission and Distribution Utilities

Section 7(A) of the amended rule required CMP, BHE and MPS to continue to provide benefits to participants in their existing low-income programs for the program year ending September 30, 2002. No comments were received on this section and it remains unchanged in the adopted rule.

Section 7(B)(1) of the amended rule required CMP, BHE and MPS to provide notice to participants in their existing low-income programs of any modifications to those programs. In its comments, CMP asserted that the requirements of §7(B)(1) were unnecessary because such notice would duplicate the information already being provided by CAP agencies. We agree with CMP and have removed this requirement from the adopted rule.

Section 7(B)(2) of the amended rule required all utilities that are implementing a new LIAP to provide notice of the provisions of the LIAP to all of their residential customers. No comments were received on this section and it remains unchanged in the adopted rule as section 7(B)(1).

Section 7(B)(3) of the amended rule required each transmission and distribution utility to inform its residential customers of its LIAP in a bill insert issued annually beginning in the fall of 2001. In its comments, CMP opposed the requirements of this section as duplicative and unnecessary. CMP asserted that the information would be irrelevant to the vast majority of its customers and that eligible customers already receive information about its LIAP through other mechanisms. CMP noted that it would be appropriate to require utilities to provide LIAP information in notices that are already required by Chapter 81. We agree with CMP and have modified §7(B)(3) to require each utility to include information about its LIAP in any mailings required by the Commission's Winter Disconnect Rule. In its comments, BHE expressed concern about the potential ambiguity of the wording of §7(B)(3). The text that concerned BHE has been deleted from §7(B)(3) of the adopted rule. Section 7(B)(3) of the amended rule is section 7(B)(2) in the adopted rule.

Section 7(C) of the amended rule provided that the rule supersedes any conflicting tariff provision and directed each transmission and distribution utility to file any tariff modifications necessary to comply with this rule. This section also required utilities to file terms and conditions to comply with the amended rule by August 1, 2001. We removed the requirement in the adopted rule that utilities file terms and conditions by August 1, 2001, because section 3 of the adopted rule already addresses the issue of terms and conditions and

requires that they be filed by September 1, 2001. The remainder of section 3(A) remains unchanged in the adopted rule.

Section 7(D) of the amended rule identified information that transmission and distribution utilities must provide upon request. This section also recommend that MSHA, Community Action Agencies and transmission and distribution utilities work together to identify cost-effective ways to transfer information electronically and to employ available protocols that will minimize administrative costs associated with the statewide plan and the LIAPs. In its comments, CMP asserted that account information identified in this section should not be released by the utility until the customer has given authority to release such information. In its comments, the MSHA recommended that we remove the reference to CAP agencies because it may contract with entities other than CAP agencies to administer the LIAPs at the local level. We agree with both comments and have removed the reference to CAP Agencies and have modified §7(D) to require that MSHA or MSHA-designated entities obtain customer authorization to release account information prior to requesting that information from utilities.

Section 7(E) of the amended rule directed each transmission and distribution utility to "coordinate its funding and delivery" of energy management and demand side programs with the implementation of its LIAP. In its comments, BHE recommended that the words "and deliver" be deleted because BHE may not be delivering energy management services in the future. The language in the amended rule does not mandate that transmission and distribution utilities fund or deliver energy management and demand side programs, only that they *coordinate* any funding or delivery they may do with the implementation of its LIAP. This section, therefore, remains unchanged in the adopted rule.

Section 7(F) of the amended rule required each transmission and distribution utility to provide quarterly and annual reports to the Commission and MSHA and identified seven categories of information to be included in the reports. In its comments, the MCAA recommended that "the number of new enrollments per month" and "the number of enrollees dropped from the program each month, and the reasons they were dropped" be added to the list. The adopted rule requires utilities to report the number of participants dropped from the program by month, but does not require the utilities to report the reasons why the participants were dropped or the number of new enrollees each month.

We do not require utilities to report the reason participants were dropped because we believe this would be unnecessarily burdensome. Customers dropped from the program are free to file a complaint with the Commission's Consumer Assistance Division if they disagree with their removal. We do not require utilities to report the number of new enrollees each month because this information can be determined from information that is already reported.

H. Section 8: Waiver

The amended rule contained a waiver provision that allows the Commission to waive certain requirements of the rule upon the request of any person subject to the rule or upon the Commission's own motion. No one commented on this provision and it remains unchanged as §8 of the adopted rule.

I. Appendix A

Appendix A identifies Statewide Low-Income Assistance Plan costs and administrative costs. In its comments, MSHA noted that the total for the Assessment column should equal the total for the Apportionment column. We have corrected the typographical error in the adopted rule. We have also amended the headings of the charts in Appendix A to clarify that they refer to the entire Statewide Low-Income Assistance Plan and not just to the individual LIAPs.

IV. FISCAL IMPACT

5 M.R.S.A. §8057-A(1) requires the Commission to estimate the fiscal impact of the adopted rule. A summary of the funding obligations for each transmission and distribution utility subject to the rule is set forth in Appendix A.

Accordingly, we

ORDER

1. That the attached Chapter 314, "Statewide Low-Income Assistance Plan" is hereby approved;

2. The Administrative Director shall send copies of this Order and the attached adopted rule to:

   a. All transmission and distribution utilities in the State;

   b. All persons who have filed with the Commission within the past year a written request for copies of this or any other notices of rulemaking;

   c. The Office of the Public Advocate;

   d. All persons on the low-income rule workgroup stakeholder list;

e. All licensed competitive electricity providers in the State;

f. The Secretary of State for publication in accordance with 5 M.R.S.A. §8053(5); and

g. The Executive Director of the Legislative Council; 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

3. That the Public Information Coordinator shall post a copy of this Order on the Commission's World Wide Web page (http://www.state.me.us.mpuc/).

Dated at Augusta, Maine, this 31st day of July, 2001

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond